

January 6, 2006

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IN THE SUPREME COURT OF THE STATE OF IDAHO

2006 Opinion No. 1

**KATHERINE H. TROUTNER and
EARNEST D. JOHNSON,**

Plaintiffs-Appellants,

v.

**DIRK KEMPTHORNE, in his official
capacity as Governor of the State of Idaho,
ROBERT L. GEDDES, in his official capacity
as President Pro Tempore of the Idaho State
Senate, the IDAHO STATE SENATE and J.)
PHILIP REBERGER,**

Defendants-Respondents.

Docket No. 30959

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, in and for Ada County. Hon. Michael R. McLaughlin, District Judge.

Huntley Park, LLP, for appellants. Daniel E. Williams argued.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondents. Brett T. Delange, Deputy Attorney General, argued.

In an opinion released today, the Idaho Supreme Court affirmed the district court's order dismissing the Plaintiffs-Appellants' (Plaintiffs) lawsuit seeking to have J. Philip Reberger (Reberger) removed from the Idaho Judicial Council.

The Governor nominated, and the Senate confirmed, Reberger to a term on the Idaho Judicial Council commencing on September 18, 2003, and expiring on July 1, 2009. The Plaintiffs brought this action seeking to have Reberger removed from the Judicial Council. The

Plaintiffs contend that the appointment of Reberger, a Republican, resulted in four Republicans being on the Judicial Council, in violation of Idaho Code § 1-2101(1)'s provision that not more than three of the permanent appointed members shall be from one political party. They also contend that Reberger was ineligible for appointment because his membership on commissions or boards constituted holding another office or position of profit under the state. They named as defendants Dirk Kempthorne as Governor of the state of Idaho, Robert L. Geddes as President Pro Tempore of the Idaho Senate, the Idaho Senate, and Reberger (collectively "Defendants").

The Defendants moved to dismiss the complaint, and, after hearing oral argument, the district court granted the motion. It held that the Plaintiffs lacked standing, that the issue was a non-justiciable political question, and that Reberger's appointment did not violate Idaho Code § 1-2101(1).

In an opinion released today, the Idaho Supreme Court affirmed the district court's decision. The Court found that the Plaintiffs failed to allege that they have suffered any distinct and palpable injury from Reberger's appointment or that the judicial relief requested will prevent or redress the claimed injury. Accordingly, the Court affirmed the district court's holding that the Plaintiffs lacked standing to bring this suit.

The Court also upheld the district court's decision that Reberger's appointment was a non-justiciable political question not subject to the court's review pursuant to the doctrine of separation of powers embraced in Article II, § 1, of the Idaho Constitution. The Court held that the controlling constitutional provision gives the Senate the sole authority to pass upon the qualifications of the nominee. Accordingly, the Court held it would be violative of the separation of powers for this Court to substitute its view for that of the Senate regarding whether Reberger was qualified to be appointed to the Judicial Council.

As such, the Court affirmed the judgment of the district court and awarded costs on appeal to the Defendants.